

CC-2010-002

December 2, 2009

Subject: Section 6603 – Deposits and
Related Interest

Cancel Date: December 2, 2010

Purpose

This Notice provides assistance in advising the Internal Revenue Service regarding taxpayer requests for the return of section 6603 deposits and related interest.

Law and Analysis

Section 6603(a) allows a taxpayer to make a designated cash deposit for a potential future payment of tax, which has not been assessed at the time of deposit. Section 6603(d)(1) provides, that for purposes of section 6611 (except as provided in section 6603(d)(4) relating to the applicable rate of interest), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. The term “disputable tax” is defined in section 6603(d)(2)(A) as “the taxpayer’s reasonable estimate of the maximum amount of any tax attributable to the disputable items.”¹ The taxpayer is entitled to section 6603 interest at the rate provided in section 6603(d)(4) on a deposit that is returned, but only to the extent the deposit is attributable to a disputable tax. To the extent that the deposit exceeds the disputable tax, the taxpayer is not entitled to interest (under section 6603 or section 6611) on the amount that exceeds the disputable tax.

These principles are demonstrated in the following examples:

Example 1. Assume that a taxpayer receives a 30 day letter proposing a deficiency in the amount of \$1 million. The amount of the disputable tax is \$1 million. The taxpayer subsequently remits a section 6603 deposit in that amount. When the dispute is resolved, however, the Service assesses \$900,000. The taxpayer is entitled to section 6603 interest on the difference between the disputable tax and the actual liability, which is \$100,000. The taxpayer is not entitled to section 6611 interest on the \$100,000.

Example 2. Assume as above that the disputable tax is \$1 million, but that the taxpayer makes a section 6603 deposit in the amount of \$1.2 million. The Service assesses \$900,000 upon

¹ See section 6603(d)(2)(B), which provides a safe harbor- if the taxpayer has been issued a 30-day letter, the amount of disputable tax is, at a minimum, the amount of the deficiency proposed in the letter.

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resolution of the dispute. As in the above example, the taxpayer is entitled to section 6603 interest on \$100,000, the difference between the disputable tax and the amount of the assessment. The taxpayer is not entitled to interest under either section 6603 or section 6611 on the \$200,000 difference between the disputable tax and the amount remitted because this amount is not attributable to a disputable tax.

Rules for the administration of section 6603 are set forth in Rev. Proc. 2005-18, 2005-1 C.B. 798, which superseded (and made obsolete) Rev. Proc. 84-58.² Section 4.02(1) of Rev. Proc. 2005-18 provides, in relevant part, that upon completion of an examination, if the taxpayer consents to an assessment of the full amount of the deficiency, “an assessment will be made and any deposit will be applied...as a payment of tax as of the date the assessment was made.”³ Section 6.01 of Rev. Proc. 2005-18 provides that a taxpayer may request the return of a deposit at any time before the Service has used the deposit for a payment of tax.

When an assessment is made, and a section 6603 deposit is used to satisfy the assessment, the remittance is treated as a payment. The legal character of the entire deposit is not changed to a payment. If the legal character of the entire deposit is changed to a payment by the application of the section 6603 deposit to the liability, the taxpayer would be required to recover the excess deposit by suit for refund. This requirement would be facially inconsistent with section 6603(c), which allows the taxpayer to request return of the section 6603 deposit in writing without following claim for refund procedures. Further, converting the character of the entire deposit to that of payment would render section 6603 moot and would be inconsistent with the legislative intent of sections 6603 and 6611.

Therefore, when a taxpayer requests the return of the “excess” section 6603 deposit (i.e., the section 6603 deposit remaining after an assessment of tax) the excess amount is still a section 6603 deposit and is not a payment subject to interest under section 6611. To the extent attributable to a disputable tax, the “excess” deposit would retain its character as a deposit and earn section 6603 deposit interest from the deposit date to the date it is returned to the taxpayer, but not overpayment interest under section 6611.

Questions regarding this Notice may be directed to Blaise Dusenberry or Sarah Leevan at (202) 622-4910.

/s/
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² Prior advice which preceded the effective date of section 6603 is not instructive with respect to the treatment of section 6603 deposits.

³ Although not directly relevant here, for purposes of underpayment interest accruing on a proposed deficiency, a section 6603 deposit is treated as paid when the deposit is made, although the amount may actually be applied to the account on the date of the assessment. The date of the section 6603 deposit will usually precede the date of the assessment.